

Call to Order:

The meeting was called to order at 7:35 p.m. Present were Chairman, Paul Salafia, and members, Linn Anderson, Vincent Chiozzi, Joan Duff, John McDonnell (arrived at 8:05 p.m.), and associate member Mark Yanowitz; also present were Paul Materazzo, Director of Planning and Jacki Byerley, Planner.

2 Elm Square:

The Board opened the public hearing on an application by Morello Hospitality Group for a Special Permit for a Reduction of Parking for the proposed new restaurant Bin28 located at 2 Elm Square. The applicant, Matt Morello, gave an overview of the proposed project including the existing parking on site and the adjacent public and private parking in the area. He noted that he does not anticipate being open for lunch due to the limited menu, which will be tapas style, and extensive wine menu sold by the glass. The Board discussed the parking, deliveries to the restaurant, and the potential for outdoor dining. Mr. Morello noted that there would be sixteen (16) tables and two 2 seasonal tables. A lease has been negotiated with the Free Christian Church on Elm Street. The church will provide approximately 30 spaces in exchange for Sunday parking in the Musgrove Building parking lot. Seventy-four (74) parking spaces are required under the current bylaw. Subtracting six (6) parking spaces in a private parking lot and the 30 parking spaces leased from the church, the applicant still requires a reduction of 38 spaces by special permit. There will be two (2) designated spaces for deliveries. Ms. Byerley noted that the Board of Selectmen and the Zoning By-law permits outdoor dining. The Board questioned what the hours of operation will be. While Mr. Morello currently intends to be open evenings only, he does not want to give up the potential for extending hours to a 12:00 midnight closing or serving lunch, which is permitted. Mr. Chiozzi expressed concern for residents in the area, especially in regard to noise. Mr. Materazzo noted that this is a typical type of business to be located in the GB district and that there are a number of other like businesses already operating nearby. On a motion by Ms. Anderson, seconded by Ms. Duff, on the Board voted to close the public hearing. **Vote** Unanimous (5-0)

2 Elm Square:

The Board took up the deliberations on an application by Morello Hospitality Group for a Special Permit for a Reduction of Parking for the proposed new restaurant Bin28 located at 2 Elm Square. The Board discussed the parking in the downtown area and noted that there are 430 parking spaces within 700' of the proposed restaurant. The Board also discussed the hours of operations and recommended to approve evening hours only. Any expansion of those hours would require approval from the Planning Board. Additionally, a recommendation was made to have staff draft conditions regarding delivery times and seating. It should be noted Mr. McDonnell arrived during the deliberations.

Grassfields:

The Board opened the public hearing that was continued from the Nov. 10th meeting on an application of Old Andover Restaurant, Inc. d/b/a Grassfields Foods & Spirits for a Special Permit for a Major Non-Residential Project for the expansion of the existing restaurant located in the Shawsheen Plaza. Ms. Byerley reviewed her memo to the Board dated December 7, 2009, including the applicant's request that the Board grant a withdrawal of SP09-11 dated November 20, 2009. The applicant will only be expanding the existing restaurant by 21% versus the more than 40%, which was initially estimated. On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to grant the withdrawal of the application of Old Andover Restaurant, Inc. d/b/a Grassfields Foods & Spirits for a Special Permit for a Major Non-Residential Project (SP09-11) **Vote** Unanimous (5-0)

Celestial Circle:

The Board opened the public hearings that were continued from the Nov. 10th meeting on an application by Rayvon Realty Trust for a nine lot Definitive Subdivision Plan, entitled Celestial Circle, and a Special Permit for a Cluster Development and a Special Permit for Earth Movement, located off Sunset Rock Road. Chairman Salafia reviewed the specific items that would be discussed at this evening's meeting. They were: easements, HOA and disposition of open space.

Easements:

Ms. Byerley reviewed her memo to the Board, dated December 9, 2009, including the additional easement over lot 4 to provide pedestrian access to the open space on Parcel B. Attorney Mark Johnson, representing the applicant, noted that there is a change to the easement on lot 4. Instead of a 10' wide access easement, the access will be around the perimeter of lot 4 because the topography is better. Ms. Byerley noted that a revised plan and easement will need to be submitted. Attorney Caffrey, representing Mr. Gable, questioned if an easement was needed over a private way. Dan Koravos of DK Engineering, representing the applicant, noted that DPW requested that the water main be looped, which is why an easement is shown over Lot 6. Calvin Perry of Timothy Drive stated he objects to the variance on the width of the easement over Lot 6 to Timothy Drive. Chairman Salafia suggested he put his objections and reasons for objections in writing. Ms. Byerley reviewed her memo to the Board, dated December 9, 2009, and a letter to the Board from the Conservation Commission, dated November 10, 2009, requesting that the open space be deeded to either the Conservation Commission or AVIS. The Board discussed the access to open space and reviewed the letter dated November 12, 2009 from Alix Driscoll for the Conservation Commission. The Conservation Commission voted on Oct. 20, 2009 to mandate trails at the subdivision and allow public access to them. The commission also made several other requests and recommendations to the Planning Board. Chairman Salafia asked staff to find out if an easement is needed over a private way. Attorney Caffrey noted if the access is not marked and maintained people would feel like they were on private property. The Board discussed the grades and access points to the open space.

HOA:

Ms. Byerley noted there have been drafts of the HOA submitted for review, and she also reviewed DPW's comments to the Board, dated November 18, 2009. The Board discussed DPW's comments and its suggestion to add a Professional Engineer to provide full-time inspection and QA/QC during the entire process of installation of the porous pavement to ensure that it's built to the specifications to the conditions

Celestial Circle (cont.):**HOA:**

Mr. Larry Beals, of Beals Associates Inc., reviewed his responses dated December 7, 2009 to DPW comments, dated November 18, 2009, including maintenance of the porous pavement, and he suggested quarterly vacuuming or as needed per DEP guidelines. Chairman Salafia suggested every other month, assessing/reporting to get a base line and then it can be adjusted. Mr. Perry questioned whether the estimate for the cost of the maintenance of the porous pavement had been provided. Attorney Johnson noted that the estimate has been provided, which is around \$800 a year. Ms. Byerley noted the HOA is not finalized and can be revised later. Bob Daigle of 154 Highland Rd. expressed concern about the trash and recycling having to be picked up on Sunset Rock Rd. and the quantity of the trash that would have to be placed at the end of the street. Attorney Johnson said he would talk to DPW about their concerns regarding trash pickup and recycling and the potential to have DPW assume that responsibility. Ms. Byerley noted that DPW will not go on the roadway unless it's maintained and meets all turning radius and DPW will not plow snow due to the porous pavement. Town Counsel, Attorney Thomas Urbelis, noted trash pickup is not in control of the DPW. It's up to the trash contractor. The Board discussed trash pickup, recycling, porous pavement, HOA and on street parking.

Open Space Disposition:

The Board questioned if there is any further information of the disposition of the open space. Attorney Johnson noted that it's up to the Board. The choice of either the Conservation Commission or AVIS is fine with the developer. The Board questioned how they were going to decide. Ms. Byerley suggested offering the open space to the Conservation Commission first and, if they don't want it, then offering it to AVIS. Paul Floyd of 80 Spring Grove Rd. questioned how they can ensure the open space will be undisturbed. Chairman Salafia noted that the Inspector of Buildings ensures the limits of construction.

Attorney Urbelis questioned the issue of ownership of the lot on Timothy Drive. Attorney Johnson reviewed his response to Attorney Caffrey's letter to the Board, dated December 11, 2009, and noted the developer does not own all the land but is a trustee. Attorney Johnson also noted it's just a lot line adjustment, a Form A, and the plan will be amended to reflect it. Mr. Koravos noted that it was discussed at the first meeting, and it will only be done if the subdivision is approved. Ms. Anderson questioned if the subdivision needed to be modified. Mr. Koravos stated that the subdivision did not need to be modified, and the revision to the plan should be the final plan. Attorney Urbelis requested a note be placed on the plan to reflect that there will be a lot line adjustment. Attorney Johnson noted they would comply and they will also submit a Form A plan. Attorney Caffrey noted that the information keeps changing and questioned if the Timothy Drive subdivision needs to be modified. Attorney Johnson reviewed the 1960's decision for the Timothy Drive subdivision and noted it was not a special permit. The adjustment is just a lot line adjustment and not a modification of the entire subdivision.

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to continue the public hearings on an application by Rayvon Realty Trust for a nine lot Definitive Subdivision Plan, entitled Celestial Circle, and a Special Permit for a Cluster Development and a Special Permit for Earth Movement, located off Sunset Rock Road until Jan. 26, 2010 at 9:00 pm. **Vote Unanimous (5-0)**

Legends I:

Doug Lees of Land Engineering & Environmental Services, representing CA Investment Trust, gave an overview of the minor modification request, including the rearrangement of the buildings. Hel also noted that the modification provides a better layout, which is also further away from the fairway. Ms. Duff questioned the potential of additional units in the future. Mr. Materazzo noted that any additional units would require a formal modification of the special permit. Ms. Byerley reviewed her memo to the Board, dated December 2, 2009, and noted that DPW did review the changes, and they had no comments or issues. Mr. Chiozzi questioned if the standards for drainage has changed. Mr. Lees noted only roof runoff and the development already exceeds the storm water standards. Following a detailed discussion of the pros and cons and if the modification was minor in nature, Mr. McDonnell made a motion and was seconded by Ms. Duff. The Board voted to approve the changes to the plan as a minor modification. **Vote** (3-1-1) Mr. Salafia, and Mr. McDonnell, and Ms. Duff voting yes; Mr. Chiozzi voted no and Ms. Anderson abstained.

Following the vote there was a detailed discussion whether to allow the minor modification since the vote failed to support the modification, it was determined that Planning Staff can make the determination to accept the proposed changes as a minor modification.

Merrimack Estates:

Ms. Byerley reviewed her memo to the Board, dated November 5, 2009, including DPW's recommendation for the off-site improvement bond. On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to approve the establishment of the Off-Site Improvements of River Road by the developer in the amount of \$15, 000.00 pursuant to Condition #44 of the Definitive Subdivision Plan. **Vote** Unanimous (5-0)

Ms. Byerley also reviewed the Homeowners' Association (HOA) document for Merrimack Estates and noted that Town Counsel has reviewed and approved the HOA. On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to accept the HOA as reviewed and approved by Town Counsel. **Vote** Unanimous (5-0)

Town Meeting 2010:

Mr. Materazzo reviewed his memo to the Board, dated December 8, 2009, which contained an update on initiatives the Planning Board and staff agreed to pursue for 2010 town meeting. These include an update on the Master Plan and the Andover Economic Recovery Plan. Mr. Materazzo also reviewed a meeting on the 40R Overlay for the Town Yard which Mr. Yanowitz and Ms. Duff attended. Mr. Yanowitz and Ms. Duff gave their opinion of their observations of that meeting.

Adjournment: The Board voted to adjourn the meeting at 9:50 p.m.